

# Act No. 90

## Public Acts of 2008

### ENROLLED HOUSE BILL No. 4416

AN ACT to amend 1980 PA 299, entitled "An act to revise, consolidate, and classify the laws of this state regarding the regulation of certain occupations; to create a board for each of those occupations; to establish the powers and duties of certain departments and agencies and the boards of each occupation; to provide for the promulgation of rules; to provide for certain fees; to provide for penalties and civil fines; to establish rights, relationships, and remedies of certain persons under certain circumstances; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," by amending sections 2501 and 2512 (MCL 339.2501 and 339.2512), section 2501 as amended by 2003 PA196 and section 2512 as amended by 2002 PA 42, and by adding section 2512d.

The People of the State of Michigan enact:

Sec. 2501. As used in this article:

(a) "Employ" or "employment" means the relationship between a real estate broker and an associate broker or a real estate salesperson which may include an independent contractor relationship. The existence of an independent contractor relationship between a real estate broker and an individual licensed to the real estate broker shall not relieve the real estate broker of the responsibility to supervise acts of the licensee regulated by this article.

(b) "Independent contractor relationship" means a relationship between a real estate broker and an associate broker or real estate salesperson that satisfies both of the following conditions:

(i) A written agreement exists in which the real estate broker does not consider the associate broker or real estate salesperson as an employee for federal and state income tax purposes.

(ii) Not less than 75% of the annual compensation paid by the real estate broker to the associate broker or real estate salesperson is from commissions from the sale of real estate.

(c) "Limited service agreement" means a written service provision agreement by which the real estate broker and client establish an agency relationship in which certain enumerated services, as set forth in section 2512d(3)(b), (c), and (d), are knowingly waived in whole or part by the client.

(d) "Professional designation" means a certification from a real estate professional association demonstrating attainment of proven skills or education in a real estate occupational area and may include the right to use a title or letters after the licensee's name that represent the designation bestowed by the certifying entity.

(e) "Property management" means the leasing or renting, or the offering to lease or rent, of real property of others for a fee, commission, compensation, or other valuable consideration pursuant to a property management employment contract.

(f) "Property management account" means an interest-bearing or noninterest-bearing account or instrument used in the operation of property management.

(g) "Property management employment contract" means the written agreement entered into between a real estate broker and client concerning the real estate broker's employment as a property manager for the client; setting forth the real estate broker's duties, responsibilities, and activities as a property manager; and setting forth the handling, management, safekeeping, investment, disbursement, and use of property management money, funds, and accounts.

(h) "Real estate broker" means an individual, sole proprietorship, partnership, association, corporation, common law trust, or a combination of those entities who with intent to collect or receive a fee, compensation, or valuable consideration, sells or offers for sale, buys or offers to buy, provides or offers to provide market analyses, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of a building on real estate; who leases or offers or rents or offers for rent real estate or the improvements on the real estate for others, as a whole or partial vocation; who engages in property management as a whole or partial vocation; who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others; or who, as owner or otherwise, engages in the sale of real estate as a principal vocation.

(i) "Real estate salesperson" means a person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, to buy or offer to buy, to provide or offer to provide market analyses, to list or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of a building on real estate, or to lease or offer to lease, rent or offer for rent real estate, who is employed by a real estate broker to engage in property management, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the goodwill of an existing business for others, as a whole or partial vocation.

(j) "Service provision agreement" means a buyer agency agreement or listing agreement executed by a real estate broker and a client that establishes an agency relationship.

Sec. 2512. A licensee who commits 1 or more of the following is subject to the penalties set forth in article 6:

- (a) Except in a case involving property management, acts for more than 1 party in a transaction without the knowledge of the parties.
- (b) Fails to provide a written agency disclosure to a prospective buyer or seller in a real estate transaction as defined in section 2517.
- (c) Represents or attempts to represent a real estate broker other than the employer without the express knowledge and consent of the employer.
- (d) Fails to account for or to remit money coming into the licensee's possession which belongs to others.
- (e) Changes a business location without notification to the department.
- (f) In the case of a real estate broker, fails to return a real estate salesperson's license within 5 days as provided in section 2507.
- (g) In the case of a licensee engaged in property management, violates section 2512c(2), (5), or (6).
- (h) Except as provided in section 2512b, shares or pays a fee, commission, or other valuable consideration to a person not licensed under this article including payment to any person providing the names of, or any other information regarding, a potential seller or purchaser of real estate but excluding payment for the purchase of commercially prepared lists of names. However, a licensed real estate broker may pay a commission to a licensed real estate broker of another state if the nonresident real estate broker does not conduct in this state a negotiation for which a commission is paid.
- (i) Conducts or develops a market analysis not in compliance with section 2601(a)(ii).
- (j) Fails to provide the minimum services as specified in section 2512d(3) when providing services pursuant to a service provision agreement unless expressly waived in writing by the client under section 2517(3).
- (k) Except in the case of property management accounts, fails to deposit in the real estate broker's custodial trust or escrow account money belonging to others coming into the hands of the licensee in compliance with the following:
  - (i) A real estate broker shall retain a deposit or other money made payable to a person, partnership, corporation, or association holding a real estate broker's license under this article pending consummation or termination of the transaction involved and shall

account for the full amount of the money at the time of the consummation or termination of the transaction.

- (ii) A real estate salesperson shall pay over to the real estate broker, upon receipt, a deposit or other money on a transaction in which the real estate salesperson is engaged on behalf of the real estate broker.
- (iii) A real estate broker shall not permit an advance payment of funds belonging to others to be deposited in the real estate broker's business or personal account or to be commingled with funds on deposit belonging to the real estate broker.
- (iv) A real estate broker shall deposit, within 2 banking days after the broker has received notice that an offer to purchase is accepted by all parties, money belonging to others made payable to the real estate broker into a separate custodial trust or escrow account maintained by the real estate broker with a bank, savings and loan association, credit union, or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.
- (v) A real estate broker shall keep records of funds deposited in its custodial trust or escrow account, which records shall indicate clearly the date and from whom the money was received, the date deposited, the date of withdrawal, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. The records shall be subject to inspection by the department. A real estate broker's separate custodial trust or escrow account shall designate the real estate broker as trustee, and the custodial trust or escrow account shall provide for withdrawal of funds without previous notice. This article and the rules promulgated pursuant to this article do not prohibit the deposit of money accepted under this section in a noninterest bearing account of a state or federally chartered savings and loan association or a state or federally chartered credit union.
- (vi) If a purchase agreement signed by a seller and purchaser provides that a deposit be held by an escrowee other than a real estate broker, a licensee in possession of such a deposit shall cause the deposit to be delivered to the named escrowee within 2 banking days after the licensee has received notice that an offer to purchase is accepted by all parties.

Sec. 2512d. (1) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall perform the duties imposed in subsection (2). A real estate broker may authorize a designated agent to represent the client, so long as that authorization is in writing.

(2) A real estate broker or real estate salesperson acting pursuant to a service provision agreement owes, at a minimum, the following duties to his or her client:

(a) The exercise of reasonable care and skill in representing the client and carrying out the responsibilities of the agency relationship.

(b) The performance of the terms of the service provision agreement.

(c) Loyalty to the interest of the client.

(d) Compliance with the laws, rules, and regulations of this state and any applicable federal statutes or regulations.

(e) Referral of the client to other licensed professionals for expert advice related to material matters that are not within the expertise of the licensed agent.

(f) An accounting in a timely manner of all money and property received by the agent in which the client has or may have an interest.

(g) Confidentiality of all information obtained in the course of the agency relationship, unless disclosed with the client's permission or as provided by law, including the duty not to disclose confidential information to any licensee who is not an agent of the client.

(3) A real estate broker or real estate salesperson acting pursuant to a service provision agreement shall provide the following services to his or her client:

(a) When the real estate broker or real estate salesperson is representing a seller or lessor, the marketing of the client's property in the manner agreed upon in the service provision agreement.

(b) Acceptance of delivery and presentation of offers and counteroffers to buy, sell, or lease the client's property or the property the client seeks to purchase or lease.

(c) Assistance in developing, communicating, negotiating, and presenting offers, counteroffers, and related documents or notices until a purchase or lease agreement is executed by all parties and all contingencies are satisfied or waived.

(d) After execution of a purchase agreement by all parties, assistance as necessary to complete the transaction under the terms specified in the purchase agreement.

(e) For a broker or associate broker who is involved at the closing of a real estate or business opportunity transaction furnishing, or causing to be furnished, to the buyer and seller, a complete and detailed closing statement signed by the broker or associated broker showing each party all receipts and disbursements affecting that party.

(4) A real estate broker or real estate salesperson representing a seller under a service provision agreement shall not advertise the property to the public as "for sale by owner" or otherwise mislead the public to believe that the seller is not represented by a real estate broker.

(5) The services described in subsection (3)(b), (c), and (d) may be waived in a limited service agreement.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4417 of the 94th Legislature is enacted into law.

Enacting section 2. This amendatory act takes effect July 1, 2008.

This act is ordered to take immediate effect.